

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ECHOTA WOLFCLAN,

Plaintiff,

v.

JILMA MENESSES, *et al.*,

Defendants.

Case No. C23-5938-JLR-MLP

ORDER DIRECTING SERVICE OF
AMENDED COMPLAINT

This is a 42 U.S.C. § 1983 prisoner civil rights action asserting claims under the United States Constitution and Washington State law. Plaintiff Echota Wolfclan (“Plaintiff”) is proceeding with this action *pro se* and *in forma pauperis*. On December 8, 2023, this Court directed service of Plaintiff’s original § 1983 complaint. (Dkt. # 14.) On December 20, 2023, Plaintiff filed a motion to amend his complaint pursuant to Federal Rule of Civil Procedure 15, and on December 28, 2023, he submitted a copy of his proposed amended complaint in support of his motion. (Dkt. ## 15-16.)

Rule 15(a)(1) provides that a party may amend its complaint once as a matter of course within 21 days after serving it—or if the pleading is one to which a responsive pleading is required—21 days after service of a responsive pleading or a motion under Rule 12(b), (e), or (f),

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1 whichever is earlier. Fed. R. Civ. P. 15(a)(1). Here, Plaintiff's amended complaint was timely
2 filed to permit amendment as a matter of course. The Court further observes that the previously
3 served Defendants submitted waivers of service of summons on January 2, 2024, but have yet to
4 submit a responsive pleading or motion to Plaintiff's original complaint, and that the previously
5 served Defendants will not be required to submit a responsive pleading or motion until February
6 9, 2024. (*See* dkt. ## 18-21.)

7 Accordingly, the Court, having reviewed Plaintiff's submissions, and recognizing
8 Plaintiff's addition of Defendants in his amended pleading, hereby ORDERS as follows:

9 (1) Plaintiff's motion to amend his complaint (dkt. # 15) is STRICKEN as the motion
10 is unnecessary.

11 (2) Service by Clerk

12 The Clerk is directed to send to Assistant Secretary of the Washington State Department
13 of Social and Health Services Kevin Bovenkamp and Western State Hospital Medical Director
14 Brian Waiblinger by e-mail: a copy of Plaintiff's amended complaint (dkt. # 16), a copy of this
15 Order, a copy of the notice of lawsuit and request for waiver of service of summons, and a
16 waiver of service of summons.

17 (3) Response Required

18 Defendant shall have **thirty (30) days** within which to return the enclosed waiver of
19 service of summons. If Defendant timely returns a signed waiver, it shall have **sixty (60) days**
20 after the date designated on the notice of lawsuit to file and serve an answer or a motion
21 permitted under Rule 12 of the Federal Rules of Civil Procedure. If Defendant fails to timely
22 return a signed waiver, the Court will direct that service be effectuated under Rule 4(j) of the
23 Federal Rules of Civil Procedure, and Defendant may be required to pay the full costs of such

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1 service, pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an
2 answer or motion permitted under Rule 12 within **twenty-one (21) days** after service.

3 (4) Filing and Service by Parties, Generally

4 All attorneys admitted to practice before this Court are required to file documents
5 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
6 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
7 Plaintiff shall file all documents electronically. All filings must indicate in the upper right-hand
8 corner the name of the magistrate judge to whom the document is directed.

9 Any document filed with the Court must be accompanied by proof that it has been served
10 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiff shall
11 indicate the date the document is submitted for e-filing as the date of service.

12 (5) Motions, Generally

13 Any request for court action shall be set forth in a motion, properly filed and served.
14 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
15 part of the motion itself and not in a separate document. The motion shall include in its caption
16 (immediately below the title of the motion) a designation of the date the motion is to be noted for
17 consideration upon the Court's motion calendar.

18 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
19 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
20 motions for default, requests for the clerk to enter default judgment, and motions for the court to
21 enter default judgment where the opposing party has not appeared shall be noted for
22 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall
23 be noted for consideration no earlier than the third Friday following filing and service of the

1 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than
 2 the fourth Friday following filing and service of the motion. *Id.*

3 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
 4 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
 5 immediately preceding the date designated for consideration of the motion. The party making the
 6 motion may electronically file and serve, not later than 11:59 p.m. on the date designated for
 7 consideration of the motion, a reply to the opposing party's briefs and affidavits.

8 (6) Motions to Dismiss and Motions for Summary Judgment

9 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
 10 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
 11 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
 12 noted for consideration no earlier than the fourth Friday following filing and service of the
 13 motion.

14 Defendants filing motions to dismiss or motions for summary judge are advised that they
 15 MUST serve *Rand* notices concurrently with motions to dismiss and motions for summary
 16 judgment so that *pro se* prisoner plaintiffs will have fair, timely and adequate notice of what is
 17 required of them in order to oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir.
 18 2012). The Ninth Circuit has set forth model language for such notices:

19 A motion for summary judgment under Rule 56 of the Federal Rules of
 20 Civil Procedure will, if granted, end your case.

21 Rule 56 tells you what you must do in order to oppose a motion for
 22 summary judgment. Generally, summary judgment must be granted when
 23 there is no genuine issue of material fact – that is, if there is no real
 dispute about any fact that would affect the result of your case, the party
 who asked for summary judgment is entitled to judgment as a matter of
 law, which will end your case. When a party you are suing makes a

1 motion for summary judgment that is properly supported by declarations
 2 (or other sworn testimony), you cannot simply rely on what your
 3 complaint says. Instead, **you must set out specific facts in declarations,**
 4 **depositions, answers to interrogatories, or authenticated documents,**
 5 **as provided in Rule 56(e), that contradict the facts shown in the**
 6 **defendant's declarations and documents and show that there is a**
 7 **genuine issue of material fact for trial. If you do not submit your own**
 8 **evidence in opposition, summary judgment, if appropriate, may be**
 9 **entered against you. If summary judgment is granted, your case will**
 10 **be dismissed and there will be no trial.**

11 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

12 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their
 13 motion stricken from the Court's calendar with leave to re-file.

14 (7) Direct Communications with District Judge or Magistrate Judge

15 No direct communication is to take place with the District Judge or Magistrate Judge with
 16 regard to this case. All relevant information and papers are to be directed to the Clerk.

17 (8) The Clerk is directed to send a copy of this Order to the parties. The Clerk is
 18 further directed to send a copy of this Order and a courtesy copy of Plaintiff's amended
 19 complaint to the Washington Attorney General's Office.

20 Dated this 3rd day of January, 2024.

21 

22 MICHELLE L. PETERSON
 23 United States Magistrate Judge